IN THE

Supreme Court of the United States

October 1966 Term

NO. 1125

ELIAS TSAKONITES, *Petitioner*

v.

TRANSPACIFIC CARRIER, CORP. and HELLENIC LINES, LTD., *Respondent*

AMICUS CURIAE PETITION AND BRIEF IN SUPPORT OF PETITIONER

Motion for Leave to File the Accompanying Brief as Amicus Curiae in Support of Petition for Writ of Certiorari in the United States Court of Appeals for the Second Circuit

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STATEMENT OF INTEREST OF AMICUS CURIAE

Arthur J. Mandell of Mandell & Wright, Houston, Texas, a member of the bar of this Court, as Chairman of the Admiralty Section of the American Trial Lawyers Association and on behalf of the American Trial Lawyers Association respectfully petitions this Court for leave to file a brief, amicus curiae, on behalf of petitioner herein, and if granted, for this Honorable Court to consider the arguments and cases in point following this statement of interest.

The American Trial Lawyers Association is a national bar association, consisting of approximately 25,000 lawyers

primarily engaged in the practice of personal injury law. The Admiralty Section of this Bar Association consists of a substantial number of attorneys who specialize in maritime tort law. Said Association, particularly the Admiralty Section thereof, are vitally interested in the outcome of this case involving as it does, the important question of whether a shipowner, a legal permanent resident alien of the United States conducting a business as a shipowner from New York City, should not, like shipowners who are United States citizens, be subject to the same liabilities for injuries suffered by their employees on their vessels when such vessels are at a United States pier. Or to put it differently, since United States shipowners are liable under the Jones Act to foreign seamen serving on a foreign-registered vessel injured within the territorial waters of the United States, should not a legally admitted and permanent resident alien also be so liable.

The ever increasing number of foreign flag vessels now doing business in the United States crewed with foreign seamen but either owned or operated by American citizens or by legal residents of the United States conducting their business from the United States, make this an important question to the industry, the Admiralty Bar and to the many similarly situated crew members who are injured on board these vessels while they are within the territorial waters of the United States.

For the foregoing reasons it is respectfully prayed that the Honorable Court accept this Brief Amicus Curiae.

Respectfully,

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BRIEF OF AMICUS CURIAE AMERICAN TRIAL LAWYERS ASSOCIATION

QUESTIONS PRESENTED

Is a shipowner, a permanent resident alien of the United States, conducting extensive regularly scheduled shipping operations from the United States, enjoying all the privileges and immunities of United States citizens, immune from the duties and obligations provided for in the Jones Act applicable to American shipowners?

STATEMENT OF THE CASE

The controlling facts in this case have been stipulated. For the purpose of this brief we adopt petitioner's state-

ment of the facts set out in petitioner's application for writ of certiorari.

The bold facts are that the HELLENIC SPIRIT and some twenty-three other vessels were operated and are now being operated and directed from the City of New York by Pericles Callimanopoulos,

(a) a legally admitted and permanent resident of the United States since 1956, Appendix A

(b) owner of ninety-six percent (96%) of the Hellenic Lines, Ltd. stock, a Greek corporation, Appendix B

(c) with sole and absolute power over the management and control of the affairs of such corporation, which owns all of the stock of Trans-Pacific Carrier Corporation, a Panama corporation, the nominal owner of the HELLENIC SPIRIT. Appendix C

Tsakonites, a member of the crew of the HELLENIC SPIRIT, was injured while the vessel was in the process of discharging cargo at a dock in Brooklyn, New York. We may assume that it will be conceded that except for Callimanopoulos' inability to be a candidate for public office, he enjoyed and still enjoys all of the rights, privileges and immunities of a citizen. As a lawfully admitted alien in the United States, he became vested with the rights guaranteed by the Constitution to all people within its borders. The Bill of Rights does not acknowledge any distinction between citizens and resident aliens. It extends its inalienable privileges to all "persons" and guards against any encroachment on those rights by Federal or State authorities. *Bridges v. Wixson,* 326 U.S. 135, 161, 65 S.Ct. 1443, 1445, 89 L.Ed. 2103 (1945). It is strange indeed, and we

submit not in keeping with Congressional intent: for a resident alien who has the full protection of the constitution and laws of the United States to be judicially placed in a more advantageous position than his American citizen shipowner counterpart by immunizing him from the duties and obligations of the Jones Act when his shipping operations are conducted from the United States, its vessels regularly picking up from and delivering cargo to the United States, in competition with American shipowners who, because of their citizenship are by law bound to comply with the provision of Section 688, Title 46 U.S.C.A. (Jones Act).

The broad language of the statute providing "any seamen who shall suffer personal injury in the course of his employment may, etc." cannot possibly be interpreted to exclude seamen working on vessels which are either owned and/or operated by persons enjoying the privileges and immunities of all residents and citizens within the United States. We are, of course, aware of this Court's holding in *Lauritzen v. Larsen*, 345 U.S. 571, 73 S.Ct. 921 (1963), in which Judge Jackson takes note of the broad language of the statute. In *Lauritzen* this Court held that the statute would not reach a person performing the prescribed acts aboard a ship of a foreign state *on the high seas*. But before and since *Lauritzen* the Courts have invariably held seamen on foreign flag vessels owned and/or operated by corporations whose stock, to a substantial extent, is owned by American citizens entitled to the protection of the Jones Act. To impose the duties and obligations of an Act of Congress (which does not expressly exclude non-citizens) on American citizens operating foreign flag ships but not on legally admitted resident aliens who enjoy substantially the same privileges and immunities as citizens would be

destructive of the purposes the Jones Act sought to accomplish.

It constitutes the rankest type of discrimination against shipowner citizens of the United States operating the American Merchant Marine and to American seamen. As stated by Augustus Hand, an outstanding Admiralty Judge in *Kyriakos v. Goulandris,* 151 F.2d (1945) at Page 137:

> ". . . The intention of Congress to benefit American seamen would not be served by a contrary construction of the statute; since it would tend to encourage the hiring of foreign seamen in American ports in preference to American seamen because the aliens would not have the right of suit against their employers if injury should occur in those ports, while American Seamen would. A similar line of reasoning has been set forth by the Supreme Court in Strathear S.S. Co. v. Dillon, supra, 252 U.S. at pages 354, 355, 40 S.Ct. pages 351, 352, 64 L.Ed. 607, in connection with another section of the statute."

The Fifth Circuit in *Arthur v. Compagnie Generals Transatlantique,* 72 F.2d 662, held "nationality" unimportant and the Jones Act applicable in an action brought by an alien stevedore injured on a foreign ship in the Canal Zone. *Uravic v. F. Jarka Co.,* 282 U.S. 234, 51 S.Ct. 111.

As Senator Jones stated in considering the act, one of the purposes of the 1920 amendment was to bring the foreign seamen up to a level with our seamen by giving them the same remedy in our own ports that our seamen have.

The decision of the Court of Appeals, if allowed to stand, would be an invitation to American shipowners to set up dummy corporations, transfer its stock to a legally

permanent alien resident within the United States and by such action immunize itself against the duties and obligations of the Jones Act, thus nullifying Congressional enactments. It would be an open invitation to use subterfuge and stock manipulations for the purpose of avoiding stringent shipping laws by seeking foreign registration eagerly offered by some foreign country. This Court recognized this danger in *Lauritzen, supra,* 345 U.S. 587 as follows:

> ". . . Confronted with such operations, our Courts on occasion have pressed beyond the formalities of more or less nominal foreign registration to enforce against American shipowners the obligations which the law placed upon them . . ."

This Court refused to permit a somewhat similar subterfuge as bringing about a harsh and incongruous result in *Reed v. Yaka,* 373 U.S. 410, 83 S.Ct. 1349 (1963) and imposed liability on a shipowner who sought to immunize himself from liability for compensatory damages by bare boat chartering its vessel to the stevedoring company charged with discharging the cargo. It thus sought to limit its obligations under the exclusive provisions of the Longshoremen and Harbor Workers Act, Section 901, et seq., Title 33, U.S.C.A. even though its negligence or unseaworthiness may produce tragic injuries.

The decisions of the Court of Appeals and that of the District Court permits resident alien shipowners doing business in the United States to obtain immunity from suits to which their American competitors are subject to. But, as Plaintiffs, when it suits their convenience they are permitted, with a straight face to claim just the opposite. (see Appendix D).

Judicial sanction for such double talk would frustrate the stated Congressional policy of equalizing operating costs between American and competing foreign vessels. (Hearings 85th Congress, First Session, March 27, 1957). To achieve the ends enunciated by Representative Bonner, Congress has sought to eliminate or at least reduce, the competitive advantage of foreign flag operators by equalizing operating costs of American and foreign flag ships This was accomplished by the enactment of the LaFollette Seamen's Act of 1915 (28 Statute U.S.C.A. 85) and its amendatory provisions contained in the Jones Act of 1920, (41 Statute 1007, 46 U.S.C.A. 688 et seq). The hearings which preceded the passage of both Acts contain frank discussions of Congressional motives namely, elimination of foreign competition by equalization. (See Harold on "Some Problems Arising Out of Foreign Flag Operations", 28 Fordham Law Rev. 295-305 et seq).

The extensive operations of Hellenic Lines and its alter-ego, Pericles Callimanopoulos, are spelled out in the stipulations in the record of this case. The entire maritime operation of respondent is New York based. In terms of physical location of the executive offices, books and records, bank accounts, credit arrangements with financial institutions, etc. as well as the residence of the owner of the ninety-six percent (96%) of its stock in a home owned by the Corporation in the State of Connecticut. See Exhibit A.

The extensive operation of this Respondent can be found in the record of *Hellenic Lines, Limited v. Gulf Oil Corporation,* 340 F.2d 398. See Note 1 on Page 400 (2nd Cir. Docket # 28885). In that case the same Mr. Callimanopoulos testified as follows:

> "I tell you it's as if you asked if the city informed citizens that there is a ferry running on a specific hour from here to Staten Island. It's the same thing. We're here, established from before the war, and after the war, with nothing but regular services. And there is no person in the trade who does not know what we are doing."

There can be no serious question of substantial contacts of Hellenic Lines with the United States, if, as stated in *Gilmore & Black*, page 388, Section 6-64:

> "Finally American shipowners will not be allowed to evade their obligations under American law by taking out a nominal foreign registry, directly or through the devise of a wholly owned or controlled foreign subsidiary, and without regard to terms of the shipping articles stipulating that the rights of crew members are to be governed by the law of the country of the registry."

it ought not to be permitted here.

It is abundantly clear under the facts of this case, that the Hellenic Lines, Ltd. and Callimanopoulos have more than minimal contacts with the United States. Its shipping and operations are controlled by persons and firms largely based in the United States. This Court in *Lauritzen*, supra, has held the Jones Act not applicable in an action by a foreign seaman on a foreign vessel injured on the high seas when the owner of the vessel had minimal contacts with the United States and in *Romero v. International Terminal Operating Co.*, 358 U.S. 354, 79 S.Ct. 468, the Court, under somewhat similar circumstances, withheld Jones Act coverage even when the injury occurred in a port within the United States. But prior to the lower courts' holding in this case, there is no decision denying

Jones Act coverage to foreign seamen injured in a United States port where the employer has substantial contacts with the United States, and the principal owner of the stock of the operating corporation was and still is a legal permanent resident of the United States. Thus under *Lauritzen* and *Romero,* Tsakonites is entitled to have his case tried under the provisions of the Jones Act.

Unless this Court lays down a rule that notwithstanding Respondent's extensive operations within the United States, its regular schedule of ships bringing in and taking out cargo from the United States, the control and management of this business by a legally permanent resident alien within the United States, is nonetheless immunized of the duties and obligations imposed on American shipowners simply because through inadvertence or by his own volition, he fails to apply for or become a citizen of the United States, then it must follow that a permanent resident of the United States conducting his business within the United States must subject himself to the same duties and obligations as an American shipowner.

CONCLUSION

The departure by the Courts below from the standards set up and approved by this Court; the dilution, if not destruction, of Congressional intent to equalize in part at least, the disparity between foreign shipowners and those operated by American interests and the danger of erosion of these established principles which the decision presented here for review may engender, presents compelling reasons for this Court to grant a writ of certiorari and upon final hearing, make clear that a legally permanent resident alien within the United States conducting a vast business op-

eration may not immunize himself from the duties and obligations of the Jones Act by simply, either inadvertently or by design, fail to apply and obtain American citizenship.

Respectfully submitted,

AMERICAN TRIAL LAWYERS ASSOCIATION
ADMIRALTY SECTION

By Arthur J. Mandell

ARTHUR J. MANDELL
Section Chairman
Attorney for Amicus Curiae

DATED at Houston, Texas, this the 27th day of March, 1967.